

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARWIN NOBOA, SALOMON NOBOA,
and JOHN ENRIQUE NOBOA,

Plaintiffs,

REPORT AND
RECOMMENDATION
14 CV 730 (ARR) (CLP)

-against-

TORON RESTORATION CORP.,
FERNANDO POUSO, and JOSE LUIS
MARTINEZ,

Defendants.

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POLLAK, United States Magistrate Judge:

On February 3, 2014, plaintiff Darwin Noboa (“Noboa” or “plaintiff”) filed this action on behalf of himself and all other similarly situated past and present employees who worked for defendants Toron Restoration Corp. (“Toron”), Fernando Pouso (“Pouso”), and Jose Luis Martinez (“Martinez”) (collectively, “defendants”), seeking unpaid overtime wages, pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. (“FLSA”), and the New York Labor Law §§ 650, et seq. (“NYLL”). (Compl.¹ ¶¶ 22, 34, 39-41, 43). On March 26, 2015, the Honorable Allyne R. Ross issued an Order adopting this Court’s Report and Recommendation, granting plaintiff’s motion to amend the complaint to add Salomon Stalin Noboa and John Enrique Noboa as plaintiffs and to withdraw the class and collective action claim. (3/2/15 Order² at 1). Thereafter, on April 2, 2015, an Amended Complaint was filed, adding Salomon Noboa and John Noboa as plaintiffs. (Am.

¹Citations to “Compl.” refer to the plaintiff’s Complaint, filed on February 3, 2014.

²Citations to “3/2/15 Order” refer to Judge Ross’ Order, dated March 26, 2015, adopting this Court’s Report and Recommendation, dated March 2, 2015.

Compl.³ ¶ 2-3).

On May 18, 2016, a telephone conference was held before the undersigned, where plaintiffs' counsel indicated that John Enrique Noboa was no longer interested in having plaintiffs' counsel represent him in this case. The Court Ordered counsel to file a motion to withdraw by May 31, 2016 and to submit a status letter by June 13, 2016, indicating whether Mr. John Noboa wanted to continue with the case.

In accordance with this Court's Order, counsel for plaintiff John Enrique Noboa filed a motion to withdraw on May 31, 2016. (5/31/16 Pl.'s Ltr.⁴ at 1). In counsel's letter, counsel indicates that plaintiff John Noboa "is no longer reachable by this office" and that during their last conversation, John Noboa indicated "that he did not want to prosecute the case any longer." (Id.) Moreover, John Noboa has "refused to cooperate with counsel" and "will no longer return phone calls." (Id.) As a result of plaintiffs' counsel's motion, the Court scheduled a hearing on the motion to withdraw hearing for June 20, 2016, directing all plaintiffs to appear along with plaintiffs' counsel and defense counsel. (6/8/16 Order⁵ at 2).

Thereafter, on June 10, 2016, plaintiffs filed a letter, notifying the Court that the answering defendant in this case, Jose Luis Martinez, is not a correct party to this action. (6/10/16 Pl.'s Ltr.⁶ at 1). Accordingly, plaintiffs request that the action be dismissed as to the defendant Martinez, without prejudice, and that the hearing on the motion to withdraw be adjourned *sine die* so that the plaintiffs "can renew their motion for default against the non-answering defendants." (Id.) On June

³Citations to "Am. Compl." refer to plaintiffs' Amended Complaint, dated April 2, 2015.

⁴Citations to "Pl.'s Ltr." refer to plaintiffs' letter, dated May 31, 2016.

⁵Citations to "6/8/16 Order" refer to this Court's Order, dated June 8, 2016.

⁶Citations to "6/10/16 Pl.'s Ltr." refer to plaintiffs' letter, dated June 10, 2016.

17, 2016, the Court granted plaintiffs' request to adjourn the motion to withdraw hearing *sine die*.

In light of the foregoing, the Court respectfully recommends that the case be dismissed without prejudice as to defendant Martinez.

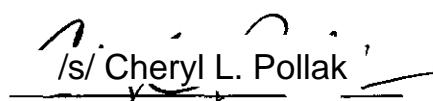
As to counsel's motion to withdraw, the Court respectfully recommends that the motion be granted as to plaintiff John Noboa. The Court ORDERS Mr. John Enrique Noboa to send a letter to the Court by August 4, 2016, indicating whether he intends to continue to pursue his claims against the non-answering defendants, and if so, whether he plans on obtaining new counsel or proceeding pro se in the matter. In the event that John Noboa intends to obtain new counsel, he is given until August 4, 2016 to do so. Finally, the Court hereby Orders counsel for plaintiffs to serve a copy of this Report and Recommendation promptly by certified mail, return receipt requested, on John Noboa. Counsel is also directed to provide the Court with copies of the return receipt.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within fourteen (14) days of receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court's Order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; Cайдор v. Онондага Кнти., 517 F.3d 601, 604 (2d Cir. 2008).

The Clerk is directed to send copies of this Report and Recommendation to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
June 20, 2016



Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York